

No. 9/5/84-6Lab/1539.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Hindustan Everest Tools Limited, Jatheri (Sonepat) :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 44 of 81

SHRI GOPI RAM, WORKMAN AND THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LIMITED, JATHERI (SONEPAT)

Shri S. L. Tyagi, A.R. for the workman.
Shri C.M. Lal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Gopi Ram and the management of M/s. Hindustan Everest Tools Limited Jatheri (Sonepat), to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 1D/SPT/99/79/10735, dated 6th March, 1981 :—

Whether the termination of services of Shri Gopi Ram was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent since the year 1963 against a permanent post as a Chargehand in the inspection department on monthly wages of Rs. 425 and was active unionist and that he was served a chargesheet-cum-suspension order on 9th May, 1978 and was placed under suspension w.e.f. 10th May, 1978 pending enquiry and that he was suspended on trumped up charges and a fake enquiry was conducted against him by Shri Surender Kaushal against whose appointment as Enquiry Officer an objection was raised by the applicant on the ground that he was a Legal Adviser of the respondent and the Enquiry Officer was not changed. Then he has given details of the various dates fixed by the Enquiry Officer and the Enquiry Officer wanted him to put his signatures on blank papers, which he refused at which he was insulted and abused by the Enquiry Officer and a protest was raised by him but he was not heard. Other allegations are that the management did not allow him to enter in the factory premises where enquiry proceedings used to be held and that after the alleged enquiry he was dismissed from service on 10th November, 1978,—*vide* letter, dated 12th December, 1978. He further alleged that he was not given proper opportunities of cross-examining the witnesses of the management and was denied his right of defence and so it is alleged that the order of termination is not proper.

3. A detailed reply has been filed by the respondent controverting the claim of the petitioner *in toto*. It is alleged that during the period of his employment the work and conduct of the petitioner was not satisfactory and in that behalf he was given warnings a number of times and that a proper charge-sheet was issued against him, to which a reply was filed by the workman, which was found unsatisfactory and so the Enquiry Officer was appointed by the Factory Manager and the request of the workman to appoint some official of the Labour Department as Enquiry Officer, a request was sent to the Labour Department at Sonepat but no Official was spared by the said department for being appointed as such. The burden of the reply about other allegations is that the workman refused to sign the enquiry proceedings in token of his presence, though the Enquiry Officer asked the workman many a times to do so and in spite of all provocations deliberate, absenteeism the Enquiry Officer afforded ample opportunities to the workman to join the enquiry proceedings, which he did leave the same some time in between and that the Enquiry Officer used to send to the workman photo copies of the enquiry proceedings of the previous date and restrained himself from proceeding *ex parte* many times and ultimately when the workman remained adamant in his contumacious behaviour, the Enquiry Officer was constrained to proceed *ex parte* and submitted findings to the management which after due consideration passed the order of dismissal. So, it is alleged that there was no question of the Enquiry Officer flouting the principles of natural justice while conducting the enquiry against the workman. So, it is alleged that the enquiry was fair and proper and no infirmity can be found with the procedure adopted by the Enquiry Officer, who is a seasoned Labour Law Consultant.

4. In the rejoinder filed by the workman, he has asserted the correctness of the allegations made in, the claim statement.

5. On the pleadings of the parties, the following issues were settled for decision by my learned predecessor Shri B.L. Goel,—*vide* his order dated 30th November, 1981 :—

- (1) Whether the enquiry conducted by the management is fair and proper?
- (2) Whether the termination of services of Shri Gopi Ram was justified and in order? If not, to what relief is he entitled?

6. Shri B.L. Goel further directed that issue No. 1 regarding domestic enquiry shall be tried as preliminary issue and decided first. In the situation, I am seized of issue No. 1 only and I propose to record my findings upon the same.

7. The management examined one witness Shri Surender Kaushal and the workman appeared as his own witness as WW-1. I shall allude to their testimonies during the course of discussion. I have heard the learned Authorised Representative for the workman Shri S.L. Tyagi and Shri C.M. Lal learned Authorised Representative for the management. My findings on the preliminary issue are as under:—

Issue No. 1:

8. The learned Authorised Representative of the workman Shri S. L. Tyagi took serious umbrage to the procedure adopted by the Enquiry Officer and the fact that the management did not hold any preliminary enquiry and that the charge-sheet served upon the workman was not proper and that no second show-cause notice was given to the workman before passing the order of dismissal and that there was no proper appointment of Enquiry Officer and that in dismissing the services of the workman, the management grossly violated the provisions of section 25-F of the Industrial Disputes Act, 1947. In support of his last contention Shri S. L. Tyagi cited number of authorities reported in 1979(2) LLJ 363 between Mahabir and D.K. Mittal, Dy. Chief Mechanical Engineer, N.E. Rly. and others, 1978(2) LLJ and 379 between Premier Tyres Ltd. and V.A. Abraham and others and between Maheshwar Thakar and Union of India and other respectively. Next authority cited was AIR 1976 S.C. 1111, *State Bank of India versus N. Sundaramoney* and 1983 (S) SIR 544, *Jai Bhagwan versus Ambala Central Co-operative Bank* and another.

9. In my opinion, none of the authorities have got remotest bearing upon the contention sought to be proposed up by the workman, because these authorities were cited to advance the plea that the order of dismissal could not have been passed without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947, which envisages the payment of one month wages and other dues to the workman when his services are retrenched. In the present case there was no retrenchment of the workman. It was a case of dismissal after proper enquiry. The word retrenchment has been defined in section 2(00) of the Industrial Disputes Act, 1947. For ready reference the same is reproduced as under:—

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action (emphasis mine) but does not include:—

- (a) voluntary retirement of the workmen ;
- or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (c) termination of the service of a workman on the ground of continued ill-health ;.....

10. The learned Authorised Representative of the respondent frankly conceded that had the case of the workman would have been of retrenchment, the contention of Shri S.L. Tyagi would have been well founded and the authorities cited by him would have applied with full force.

11. Next objection taken by Shri Tyagi was that Ex. MW-1/1 which has been held out to be a charge-sheet by the management is not a charge-sheet but a composite show-cause notice and order of suspension and in the same charges against the workman have not been amply detailed. The contention is misconceived. Certified Standing Orders which have got statutory force as held in 1984(64) Indian Factories Journal 340, photo copy of which is Ex. MW-1/20 and which were applicable upon the respondent company, the respondent could serve a suspension notice upon the workman along with the charge-sheet. I have gone through the documents Ex. MW-1/1. The charges against the workman have been clearly detailed in the same. So, this contention of the charge-sheet being not a detailed document is also not well founded.

12. Shri Tyagi further contended that the appointment of Shri Surender Kaushal as Enquiry Officer was not in accordance with the provisions of clause 20(a) of the Certified Standing Orders. His contention was that the enquiry should have been held by the Factory Manager himself or by some other official of the Company only. This contention runs counter to the plea of the workman which he took in the claim statement. In the claim statement his plea was that the officer of the Labour Department should be appointed as an Enquiry Officer. The management made efforts to procure the services of the Labour Department but Labour Department did not agree. Shri C.M. Lal cited a number of authorities to rebut the Contention that an outsider can be

appointed as an Enquiry Officer. It was so held in 1976(32) *Indian Factories and Labour Reports* 218 between Narendra Pratap and another and Jagmohan Bharti and others and 1974 (28) *Indian Factories and Labour Reports*, 80 between Crompton Creaves Ltd., Bombay and Shri S. Shinde. There is no provision in clause 20(a) of the Certified Standing Orders that an officer of the respondent alone can hold domestic enquiry. There is no denying the fact that Shri Surender Kaushal is a senior Labour Law Consultant and has been appearing before this Court and number of times, though the management had denied the allegations that he was appearing for the management earlier in any case. But competence of Shri Surender Kaushal is borne out from the enquiry report submitted by him to the management. The same is a well reasoned document in which the evidence adduced during the Enquiry proceedings has been very ably appraised by him and the conclusion drawn upon the basis of the same.

13. Another contention raised on behalf of the workman was that before passing the order of dismissal the workman should have been supplied a copy of the findings of the Enquiry Officer and also should have been served with final show cause notice. No such provision exists in Certified Standing Orders applicable to the respondent. It has been so held in 1984 (64) *Indian Factories Journal* 412, *Associated Cement Company Ltd., V/s. T.C. Sirivastava and others*. A plain reading of the Certified Standing Orders enjoins no such liability upon the management to serve a final show cause notice upon the workman before passing the order of dismissal.

14. Having failed on legal fronts the learned Authorised Representative of the workman choose to assail the procedure adopted by the Enquiry Officer in holding enquiry proceedings. His contention was that the workman was prevented by the management from joining enquiry proceedings and that the conduct of the Enquiry Officer was biased, because he has been throughout asking the workman to sign blank papers, against which, the workman protested and as such the entire enquiry proceedings stand vitiated. I am constrained to observe that the contention raised is not only unfounded but misconceived also. Statement of Shri Surender Kaushal who was examined as MW-1 was read by Shri C.M. Lal, learned Authorised Representative of the respondent in the open Court and the entire enquiry proceedings have been placed upon the record by the respondent. A reading of the Statement of Shri Surender Kaushal would show that the workman was given as many as seven opportunities and in spite of the un-cooperative attitude of the workman, the Enquiry Officer did not choose to proceed *ex parte* and had been sending carbon copies of the proceedings to the workman by registered post. He choose to proceed *ex-parte* ultimately on 23rd September, 1978 when he could not procure his presence in spite of registered notice, though earlier the workman has been appearing before the Enquiry Officer during enquiry proceedings. In this situation no infirmity can be found with the procedure adopted by the Enquiry Officer. If he has erred, he has erred on the side of leniency towards the workman. The Enquiry Officer deserves tribute in showing commendable patience while holding the enquiry though throughout the conduct of the workman was uncooperative and aggressive. The learned Authorised Representative for the respondent Shri C.M. Lal also cited 1963 (2) LLJ 367 between *Sur Enamel and Stamping Works Ltd. and Thier Workmen*. In this authority their Lordships of the Hon'ble Supreme Court observed that "it has been laid down by this Court, in the series of decision that if the industrial employees services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and and conclusions reached at the enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions". Though in the present case no lapse were committed by the Enquiry Officer, even than the law is settled that a workman cannot take advantage of the any such lapse unless it is shown that some prejudice has been caused to him or the action of the Enquiry Officer has gone detrimental to the interest of the workman. As already held the Enquiry Officer all through has been serving through registered notices upon the workman and informing him about the next date fixed, workman had been appearing before the Enquiry Officer but some time he would leave the proceedings in between and in other occasions he would force the Enquiry Officer to adjourn the proceedings by his uncooperative attitude. It has been held in 1979 (12) Lab. I.C. 1434 *M/s. Tannery and Footwear Cooperation of India V/s. State of U. P. and others*. that domestic enquiry is generally conducted by a layman with limited powers and as such enquiry is not governed by strict rules of evidence. though the Courts have always insisted upon adherence to the rules of natural justice by the Enquiry Officer. Viewed from this yard-stick enquiry conducted by Shri Surender Kaushal does not suffer from any infirmity factual or legal and that he strictly followed the principles of natural justice and fair play, while conducting the same and no action of the Enquiry Officer caused any prejudice to the workman, who, as already observed, has been erring on the side of leniency towards the workman only.

15. Before parting with this issue, I would like to dispose of another contention raised on behalf of the workman that along with the order of dismissal the management should have actually offered or tendered or remitted the dues to the workman. In support of this contention 1976(2) LLJ Page 25 was cited. This authority would apply only in case there would have been a retrenchment as provided under section 25 F of the Industrial Disputes Act, 1947. It was a case of dismissal and in the order of dismissal, the workman was directed to collect his dues from the time office of the respondent. So, this authority has no application to the facts of the present case. It was also argued on behalf of the workman that the order of dismissal could not relegate to the date of suspension of the workman as is provided in the order of dismissal. In the Certified Standing Orders applicable to the respondent clause 20.F provides that if the workman is dismissed as a result of enquiry, dismissal shall have effect from the date of suspension. So, the authority reported in 1976(2) LLJ page 60 between Hataki shore Sabu and Industrial Tribunal Orissa and others, has no application to the facts of the present case.

16. In the light of my foregoing discussion, this issue is answered in favour of the management.

17. In the light of my decision of the preliminary issue regarding domestic enquiry in favour of the management, other issue need not be decided and so, I, find that the dismissal of the workman was legal and justified and as such he deserves no relief from this Court. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 2nd February, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst No. 44/81/286, dated 21st February, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak.

The 12th March, 1985

No. 9/5/84-6Lab/1665.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s The Chief Engineer, Thermal Power House, Haryana State Electricity Board, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 157/1982

between

SHRI R.P. SINGH WORKMAN AND THE MANAGEMENT OF THE CHIEF ENGINEER,
THERMAL POWER HOUSE, HARYANA. STATE ELECTRICITY BOARD,
FARIDABAD.

Present.—

Shri R.P. Singh workman in person.
Shri Narender Pal Singh for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri R. P. Singh, workman and the management of The Chief Engineer, Thermal Power House, Haryana. State Electricity Board, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Shri R.P. Singh was justified and in order? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement, dated 2nd April, 1977, alleged that he was working with the respondent since 2nd April, 1977 on a job of a permanent nature. It was then alleged that on the basis of interview of the Junior Engineer/Operator, he was offered the post of Assistant Operator on 15th May, 1981 on the recommendation of selection committee. It was further alleged that the work and conduct of the claimant had always been good during the period 2nd April, 1977 to 31st December, 1981. It was then alleged that the services of the claimant were terminated and that the order in that respect was served on him on 24th December, 1981, but he was allowed duty upto 31st December, 1981 and the petitioner was asked to collect his dues,—vide office order, dated 6th January, 1981. The representation, dated 8th January, 1982 made by the claimant remained unreplyed. It was further alleged that no notice pay was given to him and that the services of the claimant were terminated illegally and in violation of the principles of natural justice. It was alleged that the claimant was Secretary of the Union and that the impugned order terminating his services was not passed by the Chief Engineer (Thermal) of his own free will and as such the claimant was entitled to reinstatement with full back wages.

3. The respondent in its written statement filed on 16th July, 1982 pleaded that the claimant joined the services of the Board on 2nd April, 1977 as Shift Attendant on workcharge basis. It was then pleaded that the claimant was provisionally appointed as Assistant Operator and the offer was made to him on clear understanding

that his services could be terminated without notice and without assigning any reason. It was further pleaded that the services of the claimant were terminated because he did not fulfil the requisite qualifications for the post of Assistant Operator and that the claimant was directed by the Board to join duty on his original post of Shift Attendant on 1st January, 1982, but the claimant refused to do so and was advised to collect his dues from the Board. It was then pleaded that the case of the Petitioner was referred to the Board, but his appointment as Assistant Operator was not approved by the Board because he did not possess the qualifications for that post. It was then pleaded that the Board had no alternative but to treat the petitioner as having left the services of the Board Voluntarily and that the action of the Board was quite legal and justified.

4. The claimant in his rejoinder, dated 30th July, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 30th July, 1982 :—

Whether the termination of services of Shri R.P. Singh was justified and in order ? If not, to what relief is he entitled ? OPM

6. The respondent Board has examined two witnesses and the documents, Ex. M-1 to M-6 and MW-2/1 to MW-2/3 have been tendered into evidence. The claimant has examined two witnesses and documents, Ex. W-1 to W-15, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my finding on the above issue is as under :—

7. *Issue No. 1.*—The respondent Board has examined MW-1 Shri L.R. Nangia, Administrative Officer (Thermal), H.S.E.B., Faridabad who stated that the claimant joined as Shift Attendant on 2nd April, 1977 and he applied for the post of Operator when he was called for interview. He further stated that since the persons having requisite qualifications were not available, therefore the claimant was appointed as Assistant Operator,—*vide* letter Ex. M-1. He then stated that the Haryana State Electricity Board Workers Union, Hissar made a representation, copy Ex. M-2, when the Board considered the case of the claimant and did not approve his appointment as Assistant Operator because the claimant did not fulfil the requisite qualifications for that post,—*vide* copy of the order Ex. M-3. He further stated that the letter copy Ex. M-4 was issued to the claimant in that respect and he was asked to join duty as Shift Attendant, but he refused to do so,—*vide* his letter Ex. M-5. He further stated that another letter Ex. M-6 was written to the claimant and that services of the claimant were not terminated but he himself left the job and did not join duty as Shift Attendant. MW-2 Shri Pritam Lal, Cashier, stated that on 22nd January, 1982, he made the payment of Rs. 1,666.90 paise to the claimant,—*vide* document Ex. MW-2/1. He further stated that retrenchment compensation and leave wages were paid to the claimant on 25th January, 1982,—*vide* documents Ex. MW-2/2 and MW-2/3.

8. Shri R.P. Singh claimant appeared as WW-1 and deposed that he was appointed as Shift Attendant on 2nd April, 1977 in Thermal Power House, Faridabad. He further stated that the posts of Assistant Operator were advertised, when he applied through proper channel, and was selected on the recommendations of the Selection Committee, copy Ex. W-1 and that Ex. W-2 was the offer of appointment. He further stated that he worked as Assistant Operator for more than six months when his services were terminated,—*vide* letter Ex. W-3, but he worked on that post upto 31st December, 1981,—*vide* letter Ex. W-4. He then stated that he made the representation, copy Ex. W-5, and received the reply Ex W-6 when he made another representation on 8th January, 1982, copy Ex. W-7, which remained unreplyed. He then stated that he was paid retrenchment compensation and gratuity, but no notice was given to him. He then stated that his services were terminated at the instance of the rival Union against whom the stay order copy Ex. W-8 had been issued by the Civil Court. He further stated that his appointment was approved by the Chief Engineer (Thermal Plant), H.S.E.B., who was the competent authority and that his services were terminated because he was Secretary of the Union. He then stated that persons with less qualification were working in the Board, but the services of the claimant were terminated even though the Board had authorised the Selection Committee to relax the qualification/experience in suitable cases. He further stated that his appointment was not subject to approval and that in case where the approval was required, it was specifically mentioned in the letter Ex. W-9 relating to Shri Ami Chand, WW-2 Shri Partap Singh working as Assistant in the respondent Board, stated that when the services of the claimant were terminated they met the Chief Engineer, Thermal Power House, Faridabad, who told them that the rival Union which was not recognised, was putting pressure to terminate the services of the claimant. He further stated that the appointment of the claimant was approved by the Chief Engineer, Thermal Power Plant as well as the Selection Committee. He then stated the services of other persons had not been terminated except the claimant and that there was a clause regarding relaxation of qualifications in the press Notification, which concession was given to other persons as well at the time of selection. He further stated that Shri Mahesh Kaushik and Mr. M.K. Goswami, Junior Engineer did not possess the requisite qualifications, but were selected for the technical posts. Ex. W-10 is copy of the order, dated 25th January, 1984, passed by the Authority under the Payment of Wages Act. Ex. W-11 is the advertisement which appeared in the Newspaper regarding the posts of Assistant Operator etc. Ex. W-12 and W-13 are copies of the orders, dated 28th October, 1980 and 6th November, 1981 prescribing qualifications for different posts. Ex. W-14 and W-15 are the circular regarding incentive to be given to the Board employees for promoting small family norms.

9. A perusal of the above evidence would show that the claimant was appointed as Shift Attendant in Thermal Plant at Faridabad on 2nd April, 1977 and he applied for the post of Assistant Operator in response to the advertisement appearing in the Newspaper Ex. W-11 when he was selected for that post,—*vide* copy of the

appointment letter Ex. W-2 on 15th May, 1981. His services were, however, terminated as Assistant Operator,—*vide* letter, dated 24th December, 1981, copy Ex. M-4, in which it was mentioned that his services were terminated due to administrative reasons as Assistant Operator with immediate effect. He was, however, offered the post of Shift Attendant, which he was holding before his promotion as Assistant Operator. The claimant made a representation on 30th December, 1981, copy Ex. W-5 but the same was rejected,—*vide* letter, dated 6th January, 1982 copy Ex. W-6 and the claimant was asked to collect his dues. The plea taken by the respondent Board is that since the claimant did not possess the requisite qualifications for the post of Assistant Operator, his appointment was not approved by the Board,—*vide* letter, dated 11th December, 1981, copy Ex. M-3. In the advertisement Ex. W-11, it was specifically mentioned that qualifications/experience may be relaxed in case of candidate otherwise considered suitable for the post by the competent authority. The selection committee selected the claimant for the post of Assistant Operator and he was appointed as such,—*vide* letter, dated 15th May, 1981, copy Ex. W-2. In this letter it was nowhere mentioned that the appointment of the claimant as Assistant Operator was provisional and subject to approval by the Board. The claimant has placed on file copy of the appointment letter Ex. W-9 issued in case of Shri Ami Chand in which it was specifically mentioned that the appointment was being made on provisional basis subject to the approval of the Board. It is thus apparent that where the appointment was provisional and was subject to the approval of the Board, a specific clause was added in the appointment letter. In the case of the claimant no such clause was added in the appointment letter, copy Ex. W-2, which shows that the appointing authority had relaxed qualifications/experience in case of the claimant when he was selected on the recommendations of the Selection Committee. As such, the appointment of the claimant as Assistant Operator was unconditional. Merely because the representation was made to the respondent Board by the Hissar Union, copy Ex. M-2 was no ground to terminate the services of the claimant on the plea that he did not possess requisite qualifications/experience, for the post of Assistant Operator, especially when the appointing authority had appointed the claimant as Assistant Operator on the recommendations of the Selection Committee, which was competent to do so because the qualifications/experience could be relaxed in suitable cases, according to the advertisement, Ex. W-11. In the ruling reported as *Swaran Lata and Union of India and others* 1979 I.L.L.J 273, it is laid down that the Commission while advertising the post, had reserved to itself the power to relax the qualifications in deserving cases. Under all these circumstance, the order of the respondent Board in terminating the services of the claimant as Assistant Operator was neither justified nor in order in the eye of law.

10. Moreover, the document, Ex. MW-2/2 shows that retrenchment compensation was paid to the claimant. The claimant clearly stated that no notice or notice pay was given to him. MW-2 Shri Pritam Lal Cashier did not state that notice pay was given by him to the claimant. The claimant was in service since 2nd April, 1977 previously as Shift Attendant and as Assistant Operator since 15th May, 1981. As such, he was entitled to one month's notice or notice pay in lieu thereof, according to Section 25-F of the Industrial Disputes Act, 1947. In the ruling reported as *M/s National Iron and Steel Co. Ltd. and others V. the State of West Bengal and another* AIR-1967 Supreme Court 1206, it is laid down that if a workman is retrenched without giving one month's notice, his wages for period of notice must be paid before he is asked to go. In the ruling reported as *Hutchiah and Karnataka State Road Transport Corporation*, 1983 I.L.L.J. 30, it is laid down that probationer is entitled to benefit under Section 25-F of the Industrial Disputes Act, 1947. It was argued on behalf of the respondent Board that in the appointment order copy Ex. W-2, it was mentioned that services of the claimant can be terminated without assigning any reason during probation period of one year and as such no notice was necessary. The argument is without any force because in this letter, it is nowhere mentioned that the claimant was not entitled to one month's notice, when his services are terminated. Since the provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with, the impugned order terminating the services of the claimant is illegal and liable to set aside on this ground alone.

11. It may be mentioned that it was argued on behalf of the respondent Board that the claimant had abandoned the service and it was not a case of termination of service because the claimant did not accept the offer of Shift Attendant, which post he was holding previously. The claimant was working as Assistant Operator, when his services were terminated,—*vide* copy Ex. M-4 in which it was clearly mentioned that due to administrative reasons, his services as Assistant Operator were hereby terminated. He was, however, offered the job of Shift Attendant. According to this letter, the services of the claimant as Assistant Operator were terminated. Moreover, in the document, MW-2/2, it is mentioned that claimant was paid retrenchment compensation on termination of his services on 31st December, 1981. This document also shows that the claimant was paid retrenchment compensation as his services were terminated because otherwise the question of payment of retrenchment compensation did not arise. Since the services of the claimant as Assistant Operator were terminated in an illegal manner, he did not accept the post of Shift Attendant.

12. It may also be mentioned that according to document Ex. MW-2/2 the services of the claimant were terminated on 31st December, 1981. He was paid compensation on 25th January, 1982 as mentioned in this document. The retrenchment compensation should have been paid immediately when the services of the claimant were terminated. In the ruling reported as *National Iron and Steel Company Ltd. and Third Industrial Tribunal, West Bengal and others*, 1964-I-LLJ page 525, it is laid down that where the retrenchment compensation and notice pay were offered to the workman subsequent to the retrenchment, retrenchment was illegal. The payment of retrenchment compensation after the expiry of 25 days is an irregularity, which goes to the root of the case and on this ground also the impugned order terminating the services of the claimant is liable to be set aside.

13. In view of the above discussion, it is held that the impugned order, dated 24th December, 1981, terminating the services of the claimant was neither justified nor in order. As such the claimant is entitled to re-instatement with full back wages, but the amount already received by him, —vide documents Ex. MW-2/1 to MW-2/3 would be refunded. The award is passed accordingly.

Dated the 22nd February, 1985

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 161, dated 23rd February, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/1753.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s The Registrar, Haryana Agricultural University, Hissar :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER LABOUR COURT, ROHTAK

Reference No. 26 of 1982

between

SHRI RAJINDER KUMAR, WORKMAN AND THE MANAGEMENT OF M/s THE REGISTRAR,
HARYANA AGRICULTURAL UNIVERSITY, HISSAR

Present :—

Workman in person.

Shri B.D. Mehta, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Rajinder Kumar and the management of M/s The Registrar, Haryana Agricultural University, Hissar, to this Court, for adjudication,—vide Labour Department Gazette notification No. ID/HSR/126-81/2861, dated 15th January, 1982 :—

Whether the termination of services of Shri Rajinder Kumar was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent since 14th March, 1980 as a Junior Compositor on monthly wages of Rs. 435 and remained employed as such till 5th September, 1981, on which date, his services were terminated by the respondent without holding any enquiry or payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947. Remaining allegations made in the claim statement are not genuine for the decision of the reference.

3. In the detailed reply filed by the respondent, preliminary pleas projected were that since the respondent is not an "industry" as defined in section 2(3) of the Industrial Disputes Act, 1947, so the reference is bad in law. On merits, it is admitted that the applicant was employed as Junior Compositor,—vide appointment letter, dated 14th March, 1980 on purely temporary basis. It is further alleged that since the work and conduct of the applicant was not satisfactory, his services were terminated by the Director of Publication in accordance with the letter of appointment.

4. In the replication filed by the workman, various plans taken by the respondent have been controverted.
5. On the pleadings of the parties, the following issues were settled for decision on 8th February, 1983 :—

- (1) Whether this Court has no jurisdiction to try the present reference ?
- (2) Whether the termination of services of Shri Rajinder Kumar was justified and in order ? If not, to what relief is he entitled ?

6. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri B. R. Chaudhary, Press Manager and the workman appeared as his own witness as WW-2 and further examined WW-1 Shri Hans Raj Verma his neighbourer.

7. Heard. Documents perused. My findings on the issues framed are as below :—

Issue No. 1 :

8. The learned Authorised Representative of the workman frankly conceded that the respondent is an "industry" as defined in section 2(J) of the Industrial Disputes Act, 1947, and as such he does not press the decision of this issue.

Issue No. 2 :

9. On this issue the learned Authorised Representative of the respondent forcefully contended that since the workman was employed on purely temporary basis, the respondent was fully justified in terminating the services being no longer required. In support of his contention, Shri B. D. Mehta has relied upon 1981(2) *SIR 741 State of Punjab V/s Gurjit Singh and others*.

10. On the other hand, reference can be made to 1984 (1) LLN 230 between *Karnataka State Road Transport Corporation, Bangalore and M Baraiah and others*. In this authority their lordships of the Hon'ble Supreme Court of India observed as under :—

"The Karnataka State Roads Transport Corporation terminated the employment of some of the employees during the initial period of probation and of some others during the extended period on the ground of unsatisfactory service. An industrial dispute ensued. The Labour Court, held, overruling the stand of the employer that S. 25-F of the Industrial Disputes Act, 1947 had no application, to the effect that the discharge was invalid. The employer Corporation challenged the award of the Labour Court before the High Court. A single Judge as also a Division Bench upheld the award. Hence the instant appeal to the Supreme Court.

Held. To protect the weak against the strong the policy of comprehensive definition of "retrenchment" has been effectuated. Termination embraces not merely the Act of termination by the employer, but the fact of termination however produced.

The stage has come when the view indicated in *State Bank of India v. N. Sundaramony* (1976-II L.L.N. 5), has been "absorbed into the consensus" and there is no scope for putting the clock back or for anti-clockwise operation.

Once the conclusion is reached that retrenchment as defined in S. 2(oo) of the Industrial Disputes Act covers every case of the termination of service except those which have been embodied in the definition, discharge from employment, or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of S. 25-F had not been complied with in these cases. Very appropriately there was no dispute that the necessary consequences of non-compliance of S. 25-F of the Act in a case where it applied made the order of termination void.

10. The law laid down in this authority has binding force upon this Court, because it is admitted case of the parties that the applicant was employed on 14th March, 1980 and his services were dispensed with on 5th September, 1981 and as such the applicant had admittedly actually worked for more than 240 days with the respondent and as such the respondent was not justified in terminating this services without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947. So, there is no difficulty in holding that the order of termination was illegal and void *ab initio* and as such not sustainable in the eyes of law. So, this issue in its entirety goes in favour of the petitioner.

11. On the question of back wages the learned Authorised Representative of the respondent contended that though there is no plea on behalf of the respondent that the workman remained gainfully employed after his termination, but the Court can make enquiries from the workman in that behalf and award him relief accordingly. I made verbal enquiries from the workman and also recorded his statement today in the Court. He stated

that he remained employed as a daily wagger with M/s Globe Printing Press, Ambala from 3rd January, 1984 to 22nd January, 1984 and thereafter he is still in the employment of Indian Express Paper, Chandigarh with effect from 23rd June, 1984 till today. In case of reinstatement, when the order of dismissal is displaced by the Court, normally rule is that the Courts award full wages but the Court can make a departure from the accepted principles under certain circumstances. In this case, the workman remained employed, of course, on daily wages of Rs. 15 per day for the last about one year. So, taken into consideration, the totality of circumstances, the workman is ordered to be reinstated with continuity of service and 25% back wages. The reference is answered and returned accordingly. There is no order as to cost.

The 22nd February, 1985

B.P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.
Camp Court, Hissar.

Endorsement No. 26/82/350, dated 1st March, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,

Labour Court, Rohtak,
Camp Court, Hissar.

No. 9/5/84-6Lab/1756.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Upkar Udyog Industries Area, Bahadurgarh (Rohtak).

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 179 of 1980

between

SHRI SHISH RAM, WORKMAN AND THE MANAGEMENT OF M/S. UPKAR UDYOG INDUSTRIES AREA, BAHADURGARH (ROHTAK).

Shri Harish Agrawal, A. R. for the workman.

Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Shish Ram and the management of M/s. Upkar Udyog Industries, Area, Bahadurgarh (Rohtak) to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/97/39774, dated the 4th August, 1980.

Whether the termination of services of Shri Shish Ram was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent on monthly wages of Rs. 300 and that on 29th January, 1980 when he was working in the factory, the workman was approached by one Shri Pahlad Singh Co-Fitter in the factory for some job but the workman told him that since he had a work in hand already, so he cannot do the job as desired by Shri Pahlad Singh, who made a complaint to the higher authorities, at which, he was insulted and abused and pushed out from the factory premises and that on 30th January, 1980 he lodged a complaint with Labour Inspector, Bahadurgarh, who summoned the respondent/management for 12th February, 1980 but the respondent/management did not appear. So, it is alleged that the respondent choose to terminate his services unlawfully after giving a complete go-bye to the provisions of the Industrial Disputes Act, 1947.

3. It may be mentioned that initially this reference was made against M/s. Upkar Tractor Industries Area, Bahadurgarh. Later on, on the request of the workman Government of Haryana choose to modify the notification and substituted the name of 'Upkar Udyog' in place of 'Upkar Tractors'. Intimation was received by the Labour Court in that behalf on 15-1 (year not mentioned).

4. M/s. Upkar Udyog appeared in the Court in pursuance of the notice given and filed a reply, in which preliminary objections taken was that no demand notice ever raised by the workman against the respondent and that the workman was never employed by the respondent as alleged and so the reference is bad in law. On merits also, the reply runs on the same lines, because the case of the respondent is that the workman was never employed by the respondent as alleged. Additional plea taken was that the workman remained gainfully employed.

5. In the replication filed, the workman has controverted the various pleas taken by the respondent.

6. On the pleadings of the parties, the following issues were settled for decision on 10th September, 1981.

1. Whether the relationship of Master and Servant existed between the parties ?
2. Whether no demand notice was served on the management and as the such reference is bad in law?
3. Whether the termination or services of Shri Shish Ram was justified and in order ? If not, to what relief is he entitled ?
4. Whether the workman remained gainfully employed ? If so, to what effect and to what extent ?

7. Both the parties were allowed to produce evidence. The management examined Shri Om Parkash MW-1 its Accountant and the workman appeared as WW-1 and also examined as WW-2 Shri Imtiaz. Authorised Representatives of the parties heard. Documents perused. My findings on the issues framed are as below :—

8. *Issue No. 1.*—The learned Authorised Representative of the respondent Shri M. M. Kaushal contended that the workman was never employed by the respondent as is evident from the statement of MW-1 Shri Om Parkash, Accountant of the respondent, who stated on the basis of payment register, muster roll of the respondent concern that no person by the name of Shri Shish Ram was employed by the respondent from November, 1978 to March, 1980 and that register of the respondent firm are being checked by the ESI Inspector and officials of the Labour Department. The workman appeared as MW-1 and stated that he was employed with the respondent for the last 1½ years and that when he was pushed out of the factory premises on 29th January, 1980 he lodged a complaint with the Labour Inspector Exhibit WW-1/1 and also raised a demand notice Exhibit WW1/2. He also examined WW-2 Shri Imtiaz, who stated that he knows the workman who was employed with the respondent because he used to meet the workman at the teashop of Shri Ramesh, located in front of Upkar Udyog.

9. The learned Authorised Representative of the respondent contended that even if any demand notice was raised by the workman, the same was raised against Upkar Tractors' and not against 'Upkar Udyog' and that if any conciliation proceedings were gone through notice regarding the same might have been issued against 'Upkar Tractors' and not 'Upkar Udyog' the present respondent and that conciliation proceedings under section 12 of Industrial Disputes Act, 1947 are a condition precedent before a reference can be made by the Government to the Labour Court under section 10 of the said Act. I am inclined to agree with the learned Authorised Representative for the respondent. Had the workman been employed with the respondent, there was no question that the name of the workman would not figure in the muster roll or the payment register. It is the case of the workman that he raised a demand notice against M/s. Upkar Tractors and not against M/s. Upkar Udyog. He also filed a complaint to the Labour Inspector, Bahadurgarh against M/s Upkar Tractors, so there was no question of the respondent absenting from conciliation proceedings as alleged in the demand notice. As regards the testimony of W-W2 Imptias the same does not go to the rescue of the workman because he can have no knowledge about the place of the employment of the workman. The workman could produce any co-workman from the respondent concern to bolster up his plea that he was employed with the respondent. So, the only inference possible is that the workman was never employed by the respondent and as such there is no relationship of employer and employees between the parties to the reference. So, this issue is answered against the workman.

10. *Issue No. 2.*—This issue stands covered in my discussion of issue No. 1. No demand notice was raised by the workman as per his own admission in the Court against the respondent. So the reference to the Labour Court was a condition precedent of conciliation proceeding as envisaged under section 21 of the Industrial Disputes Act, 1947, and as such the reference is bad in law.

11. *Issue No. 3.*—Since issue No. 1 has gone against the workman, there is no question of the respondent terminating the services of the applicant.

12. *Issue No. 4.*—No evidence was adduced by the respondent on this issue, so the same is answered against the respondent.

13. So, in the light of my decision on issue No. 1 this reference is bad in law, because there was no relationship of employer and employee between the parties to the reference. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 25th February, 1985

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh

Endst. No. 179/80/353, dated the 1st March, 1985

Forwarded (four copies to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak
Camp Court, Bahadurgarh

No. 9/5/84-6Lab/1760.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s Dutt Brothers, Industrial Area, Bahadurgarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 80 of 81.

between

SHRI BINDESHWAR, WORKMAN AND THE MANAGEMENT OF M/S DUTT BROTHERS,
INDUSTRIAL AREA, BAHADURGARH.

Shri R.S. Yadav, A.R. for the workman.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Bindeshwar and the management of M/s. Dutt Brothers, Industrial Area, Bahadurgarh, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/SPT/56-81/27956, dated 4th June, 1981 :—

Whether the termination of services of Shri Bindeshwar was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent for the last more than 6 years as Machine-man on monthly wages of Rs. 232 and that on 1st September, 1980 the management did not allow him to join his duties for no good reason, regarding which a complaint was filed by him to the Labour Inspector, Bahadurgarh, before whom a settlement was arrived at,—*vide* which the workman was to resume his duties from 13th September, 1980 and that the workman went to the respondent on 13th September, 1980, but he was asked to settle his accounts and not allowed to resume his duties. About this a complaint was again filed by the workman before the Labour Inspector, Bahadurgarh, who issued a notice to the respondent for 10th October, 1980 and 23rd January, 1981 but the respondent did not appear. So, it is alleged that the respondent has chosen to terminate his services unlawfully in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. A detailed reply was filed by the respondent, in which preliminary objections taken are that the management never terminated the services of the workman, who of his own started absents from duties, because the workman was put under suspension for his mis-behaviour with one Siddique and after revocation of his suspension order, in spite of notice, the workman did not appear and so it is alleged that the workman of his own abandoned his employment as per service rules of the company. *Inter alia* it is alleged that no dispute can be referred to

the Labour Court under section 2(a) of the Industrial Disputes Act, 1947 and as such the reference is bad in law. The crux of the defence taken by the respondent is that the respondent waited for the workman till 30th September, 1980 and thereafter struck off his name from the rolls of the workman. On merits also, the reply runs on the same line and as such, I need not suffer repetition. Additional plea taken is that since the workman remained employed after his alleged termination, he is not entitled to any back wages, in case of reinstatement.

4. On the pleadings of the parties, the following issues were settled for decision on 29th March, 1982 :—

1. Whether the workman abandoned his services of his own accord ?
2. If issue No. 1 is not proved, whether the termination of services of Shri Bindeshwar was justified and in order ? If not, to what relief is he entitled ?
3. Whether the workman has remained gainfully employed during the intervening period ? If so, to what effect ?

5. Both the parties were allowed to produce their evidence. The management examined Shri P.K. Dutt, its partner and the workman appeared as his own witness as WW-1. The learned Authorised Representatives of the parties heard. Documents perused.

6. The learned Authorised Representative of the respondent contended that since the controversy in hand is beyond the scope of terms of reference, so this Court has no jurisdiction to go into the controversy and that the Labour Court or the Industrial Tribunal cannot travel beyond the terms of reference as held in 1984 LLN 297 between Sita Ram Vishnu Shirodkar and Administrator, Government of Goa and others. In this authority of the Hon'ble High Court of Bombay, reliance has been placed upon a Full Bench authority of Hon'ble High Court of Delhi, India Tourism Development Corporation New Delhi *Versus* Delhi Administration and others. In this authority, their Lordships observed as under in para No. 8 of the judgement :

We are in respectful agreement with the above observations of the Full Bench of the Delhi High Court. In the instant case also the real dispute was whether the services of respondent 4 were terminated or he had voluntarily abandoned the services and the reference that was made was to this effect :

"Whether the action of the Management of Hotel Cafe Real, Panaji, in terminating the services of Shri Shanu Mengo Kunkolienkar, with effect from 1 March, 1978, is legal and justified. If the answer be in the negative, to what relief, if any, is the aforementioned workman entitled to ?"

The Tribunal could not travel beyond the reference and decide the question whether respondent 4 had abandoned his services. That the petitioner had terminated the services of respondent 4 was in fact fastened on the petitioner by this reference, and the only question left open for decision was whether the termination was legal and proper. In this view of the matter, in our opinion, the reference itself was bad and has to be quashed.....

7. Drawing sustenance from the observations quoted above, the learned Authorised Representative of the respondent Shri M.M. Kaushal forcefully contended that from the very beginning the case of the management has been that the workman abandoned his employment of his own and that there was no termination of his services on 1st September, 1980 and so the observations made in this authority apply with full force to the facts of the present case. It is not on record as to what plea was taken by the management during re-conciliation proceedings, which probably, proved abortive but plea of the respondent before the Court has been that of abandonment of employment by the workman. The story spun by the workman in the Claim Statement or the Demand Notice has not been reiterated by him in the Court when he appeared as WW-1. He simply stated that his services were terminated by the respondent on 1st September, 1980. He did not state about the anger of the management against him, because of his union activities or that he ever filed a complaint to the Labour Inspector, Bahadurgarh when the management refused to allow him to resume his duty as per settlement arrived at on 12th September, 1980. Similarly statement of Shri P.K. Dutt, M.W-1, partner of the respondent, is also beyond the scope of pleadings, because it is not the case of the management that any settlement was arrived at between the workmen and the respondent in the month of April, 1980,—vide which, lay off was lifted by the respondent. So, there is no difficulty in holding that the controversy in hand is beyond the scope of the terms of the reference, and as such this reference is bad in law.

8. On behalf of the workman beside written arguments, reliance has been placed upon 1980 Lab. I.C. 199 the Management of M/s. Gaziabad Engineering Company Private Ltd. *Versus* its workmen and AIR 1975 S.C. 681 L. Michael and another *Versus* Johnsons Pumps Ltd. Since these authorities have not got a remotest bearing upon the facts of the present case, so, I need not discuss or distinguish the same.

9. Since this reference is being answered on legal points so, I need not decide the issues framed. The reference is answered and returned accordingly. There is no order as to cost.

The 27th February, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 80/81/360, dated the 1st March, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/1765.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Dutt Brothers, Industrial Area, Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 81 of 81

between

SHRI IMTIAZ, WORKMAN AND THE MANAGEMENT OF M/S DUTT BROTHERS,
INDUSTRIAL AREA, BAHADURGARH

Shri R. S. Yadav, A.R., for the workman.

Shri M. M. Kaushal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Imtiaz and the management of M/s. Dutt Brothers, Industrial Area, Bahadurgarh,—*vide* Labour Department Gazette Notification No. ID/SPT/55/81/27986, dated 4th June, 1981 :—

Whether the termination of services of Shri Imtiaz was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman, is that he was employed with the respondent as a Machineman for the last about 6 years on monthly wages of Rs. 242 and that the management choose to put him under suspension on 7th October, 1980 on some trumped up charges, and during the period of suspension the workman has been coming to the gate of the factory to mark his presence but the same was not marked by the management, which choose to complete illegal formalities by issuing notices to the workman, but those letters received by the workman did not contain any notice, regarding which, a complaint was filed by the workman to the Labour Officer on 22nd September, 1980, but nothing came out. So, it is alleged that the management has terminated his services unlawfully in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent, controverting the various pleas taken by the workman. The preliminary objections taken are that the respondent never terminated the services of the workman, who, of his own, started absenting from his employment after the suspension order was revoked by the management and so as per service rules applicable to the employees of the company, the management did not carry forward the name of the workman in the rolls of the workers for the month of October, 1980. So, it is alleged that since there was no termination of services of the workman, this dispute is not covered under section 2(a) of the Industrial Disputes Act, and as such, this reference to this Court is bad in law. On merits also, the reply runs on the same lines. However, an additional plea has been taken regarding the workman been gainfully employed after the alleged termination of his services.

4. On the pleadings of the parties, the following issues were settled for decision on 29th March, 1982:—

- (1) Whether the workman abandoned his services of his own accord ?
- (2) If issue No. 1 is not proved, Whether the termination of services of Shri Imtiaz was justified and in order ? If not, to what relief is he entitled ?
- (3) Whether the workman has remained gainfully employed during the intervening period ? If so, to what effect ?

5. The management examined MW-1 Shri P.K. Dutt, its partner and the workman appeared as his own witness as WW-1. The management further examined MW-2 Shri Charan Dass, Clerk, Industrial Tribunal, Faridabad, MW-2 Shri J.P. Srivastava, Assistant Labour Commissioner, Haryana, Chandigarh.

6. I have heard Shri R.S. Yadav, learned Authorised Representative of the workman and Shri M.M. Kaushal for the respondent/management. The workman has also placed on record written arguments.

7. The learned Authorised Representative of the respondent raised a caveat that this Court need not go into the merits of the controversy in hand, because the same is beyond the scope of terms of reference and that no Labour Court or Industrial Tribunal can travel beyond the terms of reference as held in 1984 I.L.N. 297 between Sita Ram Vishnu Shirodkar and Administrator, Government of Goa and others. In this authority of the Hon'ble High Court of Bombay, reliance has been placed upon a Full Bench authority of Hon'ble High Court of Delhi, India Tourism Development Corporation, New Delhi V/s. Delhi Administration and others. In this authority, their Lordships observed as under in para No. 8 of the judgement :

We are in respectful agreement with the above observations of the Full Bench of the Delhi High Court. In the instant case also the real dispute was whether the services of respondent 4 were terminated or he had voluntarily abandoned the services and the reference that was made was to this effect :—

“Whether the action of the Management of Hotel Cafe Real, Panaji, in terminating the services of Shri Shanu Mengo Kunkolienkar, with effect from 1st March, 1978, is legal and justified. If the answer be in the negative, to what relief, if any, is the aforementioned workman entitled to ?”

The Tribunal could not travel beyond the reference and decide the question whether respondent 4 had abandoned his services. That the petitioner had terminated the services of respondent 4 was in fact fastened on the petitioner by this reference and the only question left open for decision was whether the termination was legal and proper. In this view of the matter, in our opinion, the reference itself was bad and has to be quashed.

8. Drawing sustenance from the observations quoted above, the learned Authorised Representative of the respondent Shri M.M. Kaushal, forcefully contended that from the very beginning the case of the management has been that the workman abandoned his employment of his own and that there was no termination of his services and so the observations made in this authority apply with full force to the facts of the present case. It is not on record as to what plea was taken by the management during conciliation proceedings, which probably, proved abortive but plea of the respondent before the Court has been that of abandonment of employment by the workman. Though no date of termination has been given in the demand notice raised by the workman and also in the Claim Statement filed in the Court but the workman when he appeared in the Court as WW-1 stated that the respondent terminated his services on 11th August, 1980 and that his services were terminated because of his union activities. Similarly statement of Shri P.K. Dutt, MW-1, partner of the respondent, is also beyond the scope of pleadings, because it is not the case of the management that any settlement was arrived at between the workmen and the management in the month of April, 1980,—vide which, lay off was lifted by the respondent. So, there is no difficulty in holding that the controversy in hand is beyond the terms of reference and as such, this reference is bad in law.

9. On behalf of the workman beside written arguments, reliance has been placed upon 1980 Lab. I.C. 399 the Management of M.s. Gaziabad Engineering Company Private Limited V/s its workmen and AIR 1975 S.C.681 L. Michael and another V/s. Johnsons Pumps Limited. Since these authorities have not got a remotest bearing upon the facts of the present case, so, I need not discuss or distinguish the same.

10. Since this reference is being answered on legal point, so I need not decide the issues framed. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 28th February, 1985.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 81/81/365, dated 1st March, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.